

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

QASIR MUKHTAR, et al.,

Defendants.

Case No.: 2:12-CR-0004-APG-GWF

**ORDER DENYING DEFENDANT
QASIR MUKHTAR'S APPEAL FROM
THE FEBRUARY 13, 2013 ORDER
DENYING PRETRIAL RELEASE**

Before the Court is Defendant Qasir Mukhtar's Appeal from the Magistrate Judge's February 13, 2013 Order Denying Defendant's Second Motion for Pretrial Release [Dkt. #315]. The Government filed a Response in Opposition [Dkt. #328], and Defendant filed a Reply [Dkt. #341].

I. BACKGROUND

Defendant Mukhtar is charged in the multi-count, multi-defendant Indictment with participating in a racketeer influenced, corrupt organization in violation of 18 U.S.C. §1962(c) and §1963; conspiracy to engage in a racketeer influenced corrupt organization in violation of 18 U.S.C. § 1962(d); and trafficking in and possessing device-making equipment, and aiding and abetting in violation of 18 U.S.C. § 1020(a)(4), (c)(1)(A)(ii), and (h) and 18 U.S.C. § 2. Mr. Mukhtar self-surrendered and was arrested in New York, where he resides, on March 15, 2012.

1 He made his initial appearance that same day before Magistrate Judge Steven M. Gold and was
2 temporarily detained. On March 21, 2012, Magistrate Judge Joan M. Azrack held a detention
3 hearing, and Mr. Mukhtar was ordered detained and removed to the District of Nevada.

4 Mr. Mukhtar's initial appearance in this District and arraignment and plea took place on
5 April 9, 2012. The Government moved for Mr. Mukhtar's pretrial detention as a substantial risk
6 of nonappearance. Defendant's counsel did not oppose the Government's motion based on the
7 fact that Immigration and Custom Enforcement ("ICE") had lodged a detainer against Mr.
8 Mukhtar on the grounds that he is a citizen of Pakistan who is not legally present in the United
9 States. The Court ordered that Mr. Mukhtar be detained pending trial.

10 Subsequently, Mr. Mukhtar filed two separate motions for pretrial release, which were
11 rejected by the Magistrate Judge and the District Judge. This current appeal arises from the
12 Magistrate Judge's February 13, 2013 Order [Dkt. #296] denying Mr. Mukhtar's Second Motion
13 for pretrial release.

14 15 **II. DISCUSSION**

16 **A. 18 U.S.C. § 3142(g) Factors**

17 A defendant may move the district court judge to revoke or amend a pretrial detention
18 Order issued by a magistrate judge. 18 U.S.C. § 3145(b). The district judge reviews the
19 magistrate judge's detention order *de novo*, without deference to the magistrate judge's factual
20 findings. *United States v. Koenig*, 912 F.2d 1190, 1191-92 (9th Cir. 1990). The district judge
21 reviews the evidence presented to the magistrate judge and makes "its own independent
22 determination whether the magistrate [judge's] findings are correct, with no deference" to either
23 the magistrate judge's factual findings or ultimate conclusion regarding the propriety of
24 detention. *Id.* at 1192-93. The district judge may, but need not, hold an evidentiary hearing to
25 make this determination. *Id.*
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1 Title 18 U.S.C. § 3142(g) requires the Court to consider four factors in determining
 2 whether to detain or release a defendant: “(1) the nature and circumstances of the offense
 3 charged, including whether the offense is a crime of violence or involves a narcotic drug; (2) the
 4 weight of the evidence against the person; (3) the history and characteristics of the person; and
 5 (4) the nature and seriousness of the danger to any person or the community should the person be
 6 released.” *United States v. Chen*, 820 F. Supp. 1205, 1207 (N.D. Cal. 1992).

7 **1. Nature and Circumstances of Offenses Charged**

8 Mr. Mukhtar is charged in the multi-count Indictment with, among other things,
 9 participating in a racketeer influenced, corrupt organization in violation of 18 U.S.C. §1962(c)
 10 and §1963; conspiracy to engage in a racketeer influenced corrupt organization in violation of 18
 11 U.S.C. § 1962(d); and trafficking in and possessing unauthorized access and device-making
 12 equipment, and aiding and abetting, in violation of 18 U.S.C. § 1020(a)(4), (c)(1)(A)(ii), and (h)
 13 and 18 U.S.C. § 2.

14 Mr. Mukhtar faces a potentially lengthy prison sentence if he is convicted on the charges
 15 in the Indictment. He then would be subject to deportation after completion of the sentence.
 16 Moreover, given that several of the offenses involve the creation and/or use of counterfeit
 17 identification and related devices, if proven the risk of nonappearance is greater, as the
 18 Defendant may have some ability to falsify transportation documents.

19 **2. Weight of Evidence Against Defendant**

20 This factor “is the least important of the various factors.” *United States v. Motamedi*, 767
 21 F.2d 1403, 1408 (9th Cir. 1985). Thus, “[a]lthough the [bail reform] statute permits the court to
 22 consider the nature of the offense and the evidence of guilt, the statute neither requires nor
 23 permits a pretrial determination that the person is guilty.” *Id.* (citations omitted). “[I]f the court
 24 impermissibly makes a preliminary determination of guilt, the refusal to grant release could
 25 become in substance a matter of punishment.” *Id.* Accordingly, factor two “may be considered
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1 only in terms of the likelihood that the person will fail to appear or will pose a danger to any
2 person or to the community.” *Id.* (citing 18 U.S.C. § 3142(g) (remaining citation omitted)).

3 Mr. Mukhtar correctly argues that “there is no basis to detain Mr. Mukhtar based simply
4 upon the ‘weight of the evidence’ against him....” See Appeal at 15:10-12. If that was the only
5 basis for detention, Mr. Mukhtar’s appeal would be granted. But as set forth herein, other
6 reasons justify his continued detention.

7 **3. History and Characteristics of Defendant**

8 Under 18 U.S.C. § 3142(g)(3), courts may consider “the history and characteristics of the
9 person, including his character, physical and mental condition, family ties, employment,
10 financial resources, length of residence in the community, community ties, past conduct, history
11 relating to drug and alcohol abuse, criminal history, [and] record concerning appearance at court
12 proceedings.” *Motamedi*, 767 F.2d at 1407.

13 Mr. Mukhtar is a citizen of Pakistan and is not lawfully present in the United States. His
14 parents and most of his siblings reside in Pakistan. Mr. Mukhtar’s wife is a naturalized United
15 States citizen, has stable employment and appears to be very supportive of Defendant. He argues
16 that he is eligible for deferment from deportation as a childhood arrival, pursuant to the DREAM
17 Act. However, given his prior conviction for a serious misdemeanor involving a violent crime,
18 and the fact that Protection Orders have been filed against him, such deferment is far from
19 certain.

20 At the time of his detention, Mr. Mukhtar had been unemployed for six months. He had
21 no significant assets and stated that he was \$5,000 in debt. He contends that he has recently
22 developed ties to a well-respected member of the Las Vegas community, and has leads on
23 obtaining a job upon release. Such representations, even if true, are not sufficient to justify
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1 pretrial release in the face of substantial risks that Mr. Mukhtar may flee.¹ Mr. Mukhtar has
 2 significant family connections (parents and siblings) in Pakistan and has wired funds (the
 3 amounts are in dispute) there. He is a flight risk.

4 **4. Nature and Seriousness of Danger to any Person or the Community**
 5 **that would be Posed by Defendant's Release**

6 At the April 9, 2012 detention hearing, the Magistrate Judge determined "that the
 7 credible testimony and information submitted at the hearing established by a preponderance of
 8 the evidence that the defendant is a risk of flight and no condition or combination of conditions
 9 will reasonably assure the appearance of the Defendant." See April 9, 2012 Detention Order
 10 Pending Trial [Dkt. #139]. Despite consideration of additional evidence and arguments
 11 presented in subsequent Motions, the Magistrate Judge has not changed his opinion. After
 12 conducting a *de novo* review (including reading the present and prior Motions), I come to the
 13 same conclusion.

14 Although Mr. Mukhtar de-emphasizes his prior convictions as minor, his criminal history
 15 includes arrests for assault, harassment, and menacing, a conviction for a violent offense, entry
 16 of temporary protection orders against him, and at least one active Order of Protection entered
 17 against him (which is not set to expire until May 31, 2013). Combined with the fact that he is
 18 not legally present in the United States, his lack of financial resources and ties to the local
 19 community, and his foreign ties, he represents a risk of nonappearance.

20 Finally, there are no conditions or combination of conditions that the Court could fashion
 21 that would reasonably assure Mr. Mukhtar's appearance at future court proceedings. Mr.
 22 Mukhtar proposes a \$10,000 bail. See Reply [Dkt. #341] at 8:4. He previously offered to have
 23 his sister-in-law's restaurant put up as security for his appearance. See Appeal [Dkt. #315] at 8:8-

24 ¹ Mr. Mukhtar also requests release in order to assist his counsel prepare for trial, which
 25 allegedly cannot be done from the Pahrump detention facility. At the same time, Mr. Mukhtar
 26 states that if he is allowed to post bail, he should be permitted to return to New York. Returning
 to New York would not facilitate his assisting his counsel in trial preparation.

11. On the totality of the circumstances present in this case, the Court finds that such offers of bail – as well as any other conditions or combination of conditions -- are insufficient guarantees to overcome the risk that Mr. Mukhtar will flee.

B. November 2013 Trial Date

Despite his arguments to the contrary, Mr. Mukhtar's Sixth Amendment rights are not being violated by his continued detention until the November 2013 trial date. However, should the Government seek to further delay the trial beyond the current November 2013 date, Mr. Mukhtar may have a stronger argument at that time. Without prejudging that issue, Mr. Mukhtar is free to raise this issue again should another extension of the trial date be sought.

For the foregoing reasons, the Magistrate Judge's February 13, 2013 Order [Dkt. #296] is affirmed, and Mr. Mukhtar is to remain in pretrial detention.

III. CONCLUSION

IT IS THEREFORE ORDERED that Defendant Qasir Mukhtar's Appeal [Dkt. #315] from the Magistrate Judge's February 13, 2013 Order Denying Defendant's Second Motion for Pretrial Release is hereby **DENIED**. The Magistrate Judge's decision reflected in the February 13, 2013 Order [Dkt. #296] is hereby **AFFIRMED**.

DATED this 15th day of May, 2013.


ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE